

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG

JOSHUA DANIEL STEVENS,

Plaintiff,

v.

Civ. Action No. 1:18-CV-140  
(Kleeh)

BETSY JIVIDEN, KAREN PSZCOLKOWSKI,  
WILLIAM YURCINA, MIKE HILL,  
RICHARD MCKEEN, RUSSELL COOK,  
CHRISTOPHER FOLMER, JAMIE GRAY,  
PAMELA MOORE, and MICHELLE SCOTT,

Defendants.

ORDER ADOPTING PRELIMINARY  
REPORT AND RECOMMENDATION [ECF NO. 76]

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On July 5, 2018, the pro se Plaintiff, Joshua Daniel Stevens ("Plaintiff"), filed a Complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges, among other things, that certain defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment to the United States Constitution.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. Defendants Jamie Gray ("Gray") and Pamela Moore ("Moore") (together, "Defendants") filed a Motion to Dismiss for failure to state a claim [ECF No. 30]. The motion is fully briefed and ripe for consideration. On July 6, 2020, the Magistrate

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Judge entered a Preliminary Report and Recommendation (the "R&R"), recommending that the Court grant the motion and dismiss with prejudice the claims against Defendants. The Magistrate Judge also recommended that the Court grant Defendants' pending Motion to Strike Duplicative Pleading [ECF No. 43].

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "written objections identifying the portions of the Recommendation to which the objections are made." It further warned them that the "[f]ailure to timely file objections . . . will result in waiver of the right to de novo review by this Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that Plaintiff accepted service of the R&R on July 9, 2020. See ECF No. 77. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciroprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial

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Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R in full [ECF No. 76]. Defendants' Motion to Dismiss [ECF No. 30] is **GRANTED**. All claims against Gray and Moore are hereby **DISMISSED WITH PREJUDICE**. The Court also **GRANTS** Defendants' Motion to Strike Duplicative Pleading [ECF No. 43]. The Court **DIRECTS** the Clerk to enter judgment in favor of Defendants as it relates to claims against Gray and Moore. All other claims remain pending.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Plaintiff via certified mail, return receipt requested.

DATED: August 4, 2020



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THOMAS S. KLEEH  
UNITED STATES DISTRICT JUDGE